

8/12/99

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO.

BAY CHEMICAL COMPANY, BARBARA ALLEN,
CENEX AGRICULTURE, LONE STAR NW, INC.,
MINTERCREEK DEVELOPMENT, NORDLUND
BOAT COMPANY, NORDLUND PROPERTIES, INC.,
NORMAN NORDLUND, PHYLLIS NORDLUND,
RYDER TRUCK RENTAL, STREICH BROTHERS,
VANCE LIFT TRUCK SERVICES, INC., OLSON 7
CURRAN BARNACLE STOPPING; SEAGULL
PROOFING, SALT WATER FREE, VERTICAL DRY
DOCK CO., LTD.; dba OLE & CHARLIE'S HIGH &
DRY CO. AND OLE & DICK'S BOATHOUSES;
DON OLSON & ARNOLD OLSON dba BIG "O" CO.,
DON OLSON; ARNOLD & PETER CURRAN dba
WEST-WATERWAY ASSOCIATES, DONALD S.
AND BARBARA L. OLSON, CHARLES P. AND
PATRICIA CURRAN, MOLLY E. BARRY,
KAY E. OLSON,

Defendants.

CONSENT DECREE

Consent Decree - 1

U.S. Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

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I. BACKGROUND

A. As a result of the release or threatened release of hazardous substances at or from the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington ("CB/NT Site"), the U.S. Environmental Protection Agency ("EPA") and other governmental and private entities have undertaken response actions at or in connection with the CB/NT Site under Section 104 and Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604 and § 9606, and will undertake response actions in the future. In performing these response actions, EPA and other governmental and private entities have incurred and will continue to incur Response Costs at or in connection with the CB/NT Site.

B. On September 8, 1983, EPA placed the CB/NT Site on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

C. Under a Cooperative Agreement with EPA, the Washington Department of Ecology (Ecology) conducted a Remedial Investigation and Feasibility Study (RI/FS) of the CB/NT Site. Within the Tideflats area of the CB/NT Site, the RI/FS evaluated the nature and extent of contamination in the Sitcum, Blair, Milwaukee, Hylebos, St. Paul, Middle, Thea Foss (formerly known as City), and Wheeler-Osgood Waterways. The final RI/FS was made available for public comment in February 1989.

D. Because of the complexity of the CB/NT Site, Superfund response actions at the CB/NT Site are currently coordinated under seven operable units managed primarily by EPA and Ecology, including: (1) Operable Unit 01 - CB/NT Sediments; (2) Operable Unit 02 - ASARCO Tacoma Smelter; (3) Operable Unit 03 - Tacoma Tar Pits; (4) Operable Unit

04 - ASARCO Off-Property; (5) Operable Unit 05 - CB/NT Sources; (6) Operable Unit 06 - ASARCO Sediments; and (7) Operable Unit 07 - ASARCO demolition.

E. On September 30, 1989, EPA issued a Record of Decision (ROD) that selected the remedy for remediation of sediments, OU1, and sources of contamination, OU5. The ROD identified eight (8) problem areas within OU1 that required sediment cleanup. The eight problem areas were the Head and Mouth of the Hylebos Waterway, Sitcum Waterway, St. Paul Waterway, Middle Waterway, Head and Mouth of the Thea Foss Waterway (formerly City Waterway), and Wheeler-Osgood Waterway. EPA determined in the ROD that there were five major elements of the selected remedy for the CB/NT Site sediments and sources that will be applied, as appropriate, to each problem area:

i. Site Use Restrictions - To protect human health by limiting access to edible resources prior to and during implementation of source and sediment remedial activities.

ii. Source Control - To be implemented to prevent recontamination of sediments.

iii. Natural Recovery - Included as a preferred remediation strategy for marginally contaminated sediments that are predicted to achieve acceptable sediment quality through either biodegradation, or burial and mixing with naturally accumulating clean sediments within a ten (10) year period.

iv. Sediment Remedial Action - To address sediments containing contamination that is not expected to naturally recover within 10 years. The ROD required active sediment cleanup using one of the following four technologies: in-place capping, dredging and confined aquatic disposal, dredging and nearshore disposal, or dredging and upland disposal. The disposal option is to be identified during design of the remedial action.

v. Source and Sediment Monitoring - To refine cleanup volume estimates, characterize the effectiveness of source controls, and implement long-term monitoring of the remedial action(s) to ensure long-term protectiveness of the remedy.

F. Under a State Cooperative Agreement, EPA and the Washington Department of Ecology agreed that Ecology would implement OU5 source control actions using state law authorities and EPA would stay in the lead for implementing the sediment cleanup, OU1.

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1 G. This Consent Decree involves Response Costs associated with the Mouth
2 and Head of the Hylebos Waterway Problem Areas. The ROD determined that natural
3 recovery will not sufficiently reduce contaminant concentrations in some areas of the Mouth
4 and Head of the Hylebos Waterway within the ten (10) year period, so the ROD required
5 active sediment cleanup with one (1) of the four (4) technology options of the remedy.

6 H. Six companies or entities are currently performing pre-remedial design
7 activities pursuant to the ROD on the Hylebos Waterway Problem Areas under an
8 Administrative Order on Consent, dated November 25, 1993. After the pre-remedial design
9 studies are complete, it is anticipated that negotiations for performance of the remedial
10 design and remedial action will be commenced with potentially responsible parties
11 associated with the Hylebos Waterway Problem Areas. A couple removal actions are also
12 being conducted by responsible parties under Administrative Orders on Consent on
portions of intertidal or subtidal sediments in the Hylebos Waterway.

13 I. Settling Defendants and other parties entered into an allocation agreement
14 which established a process by which a third-party, neutral allocator would determine
15 shares of liability for all potentially responsible parties associated with the Hylebos
16 Waterway Problem Areas. Settling Defendants represent that, as part of the private party
17 allocation process, they conducted a thorough search of their documents and fully and
18 accurately disclosed to the allocator all documents in their possession or control relating
19 to their liability for Response Costs at the Hylebos Waterway Problem Areas. In addition,
20 Settling Defendants represent that witnesses selected by the allocator were made available
21 for deposition testimony. Based on the information so developed and on extensive
22 independent investigation of documents and other sources of information, the allocator
23 determined that the Settling Defendants contributed no more than minor amounts of
24 hazardous substances to the Waterway compared to other parties. The allocator's reports,
25 dated September 25, 1997 and October 30, 1997 ("Allocator's Reports"), assessed the
Settling Defendants' share of Response Costs and formed the basis of this settlement.

1 EPA independently reviewed the Allocator's Reports and accepts the allocator's findings
2 for purposes of this settlement.

3 J. The Settling Defendants do not admit any liability arising out of the
4 transactions or occurrences alleged to have occurred in connection with the Hylebos
5 Waterway Problem Areas within the CB/NT Site.

6 K. The United States and Settling Defendants agree that settlement without
7 further litigation and without the admission or adjudication of any issue of fact or law is in
8 the public interest and is the most appropriate means of resolving this action with respect
9 to Settling Defendants.

10 THEREFORE, with the consent of the Parties to this Consent Decree, it is
11 ORDERED, ADJUDGED, and DECREED:

12 II. JURISDICTION

13 1. This Court has jurisdiction over the subject matter of this action pursuant to
14 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction
15 over Settling Defendants. Settling Defendants consent to and shall not challenge the
16 terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent
17 Decree.

18 III. PARTIES BOUND

19 2. This Consent Decree is binding upon the United States and upon Settling
20 Defendants and their heirs, successors and assigns. Any change in ownership or
21 corporate or other legal status of a Settling Defendant, including but not limited to, any
22 transfer of assets or real or personal property shall in no way alter such Settling
23 Defendant's responsibilities under this Consent Decree. This Consent Decree does not
24 bind any person or State agency that is not a party to it.

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IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, by allowing Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Hylebos Waterway Problem Areas, and for Response Costs incurred and to be incurred at or in connection with the Hylebos Waterway Problem Areas, except the reimbursement claims for cost overruns reserved against Settling Defendants which pay a 50% premium, thereby reducing litigation relating to the Hylebos Waterway Problem Areas;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Hylebos Waterway Problem Areas by reducing the number of potentially responsible parties from further involvement at the Hylebos Waterway Problem Areas with respect to Response Costs; and

c. to obtain settlement with Settling Defendants for reimbursement of a portion of Response Costs incurred and to be incurred at or in connection with the Hylebos Waterway Problem Areas by the EPA Hazardous Substance Superfund and by private parties, and to provide for full and complete contribution protection for Settling Defendants with regard to the Response Costs, pursuant to Sections 113(f)(2) and 122 of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622, and as more fully set forth in Paragraph 22 of this Consent Decree.

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V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

1 a. "CERCLA" shall mean the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended,
3 42 U.S.C. § 9601, et seq.

4 b. "Consent Decree" or "Decree" shall mean this Consent Decree and
5 all appendices attached hereto. In the event of conflict between this Consent Decree and
6 any appendix, the Consent Decree shall control.

7 c. "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT
8 Site") shall mean the entire Commencement Bay Nearshore/Tideflats Superfund Site and
9 project area, including contaminated sediments and sources of contamination within the
10 CB/NT Site, located in the City of Tacoma, Pierce County, Washington, and as defined in
11 the CB/NT Record of Decision, dated September 30, 1989.

12 d. "Day" shall mean a calendar day. In computing any period of time
13 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal
14 holiday, the period shall run until the close of business of the next working day.

15 e. "EPA" shall mean the United States Environmental Protection Agency
16 and any successor departments, agencies, or instrumentalities.

17 f. "EPA Hazardous Substance Superfund" shall mean the Hazardous
18 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

19 g. "Mouth and Head of the Hylebos Waterway Problem
20 Areas" or "Hylebos Waterway Problem Areas" shall mean the contaminated sediments,
21 intertidal and subtidal, at and adjacent to the Mouth and the Head of the Hylebos
22 Waterway, two of eight Problem Areas only within OU1 of the CB/NT Site, as described
23 in the CB/NT Site Record of Decision, dated September 30, 1989. This term does not
24 include OU5, which encompasses upland properties adjacent to the Hylebos Waterway
25 that are past, present or future sources of hazardous substances to the Hylebos Waterway
26 Problem Areas.

1 h. "Interest" shall mean interest at the current rate specified for interest
2 on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. §
3 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §
4 9607(a).

5 i. "Paragraph" shall mean a portion of this Consent Decree identified by
6 an Arabic numeral or an upper or lower case letter.

7 j. "Parties" shall mean the United States and the Settling Defendants.

8 k. "Section" shall mean a portion of this Consent Decree identified by a
9 roman numeral.

10 l. "Settling Defendants" shall mean those persons, corporations, or other
11 entities listed in Appendix A.

12 m. "Record of Decision" ("ROD") shall mean the EPA Record of Decision
13 relating to the CB/NT Site, including the Mouth and Head of the Hylebos Waterway
14 Problem Areas, signed on September 30, 1989, by the EPA Regional Administrator, EPA
15 Region X, and all attachments thereto, and any Explanations of Significant Differences
16 issued after September 30, 1989, which relate to or affect the Hylebos Waterway Problem
17 Areas.

18 n. "Response Costs" shall mean all costs of "response" as that term is
19 defined by Section 101(25) of CERCLA, 42 U.S.C. §9601(25), and incurred in connection
20 to the Hylebos Waterway Problem Areas Response Costs shall also include any CB/NT
21 area-wide site costs billed to the CB/NT area-wide account that EPA may attribute or
22 allocate to the Hylebos Waterway Problem Areas. Response Costs shall not include costs
23 incurred by any entity related to upland hazardous waste cleanups and/or source control.

24 o. "United States" shall mean the United States of America, including its
25 departments, agencies, and instrumentalities.

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VI. PAYMENT

5. Within forty-five (45) days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA Hazardous Substance Superfund the amounts set forth in Appendix B or C to this Consent Decree (the "Total Payment Amount") and in the manner set forth in Paragraph 7 below.

6. Each Settling Defendant's payment includes an amount for:

a. past response costs incurred at or in connection with the Hylebos Waterway Problem Areas; and

b. Response Costs to be incurred at or in connection with the Site; and either c(i) or c(ii) as follows:

c.

i) A one hundred percent (100%) premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs incurred or to be incurred in connection with the Hylebos Waterway Problem Areas, by any entity, will exceed the cost estimate for future Response Costs used in the allocation process (i.e., \$47.8 million) or exceed the amount other PRPs can contribute (Settling Defendants who have selected the 100% premium are listed in Appendix B); or

ii) A fifty percent (50%) premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs incurred or to be incurred in connection with the Hylebos Waterway Problem Areas, by any entity, will exceed the cost estimate for future Response Costs used in the allocation process (i.e., \$47.8 million) or exceed the amount other PRPs can contribute (Settling Defendants who have selected the 50% premium are listed in Appendix C). EPA expressly reserves the right to recover further proportionate Response Costs in accordance with the formulae contained in Appendix C from Settling Defendants listed in Appendix C who selected this 50% premium in the event actual total future Response

1 Costs exceed the cost estimate for future Response Costs used in the allocation process
2 (i.e., \$47.8 million).

3 7. Each Settling Defendant shall pay to the EPA Hazardous Substance
4 Superfund the Total Payment Amount specified for each Settling Defendant included in
5 Appendix B or C. Of the Total Payment Amount to be paid by each Settling Defendant
6 pursuant to this Consent Decree, the amount specified in Appendix B or C as "Past Cost
7 Payment" shall be deposited in the EPA Hazardous Substance Superfund as
8 reimbursement for Response Costs incurred and paid at or in connection with the Hylebos
9 Waterway Problem Areas as of the date of lodging of this Consent Decree, and the
10 remainder specified as "Total Future Cost Payment" shall be deposited in the Hylebos
11 Waterway Problem Areas Special Account within the EPA Hazardous Substance
12 Superfund to be retained and used to conduct or finance the response action at or in
13 connection with the Hylebos Waterway Problem Areas. After certification of completion
14 of the Hylebos Waterway remedial action, any balance remaining in the Hylebos Waterway
15 Problem Areas Special Account shall be transferred by EPA to the EPA Hazardous
16 Substance Superfund. Settling Defendants' payments under this Consent Decree shall
17 be paid by FedWire electronic Funds Transfer to the U.S. Department of Justice account
18 in accordance with current electronic funds transfer procedures, referencing the U.S.A.O.
19 file number, the site/spill identification number 10Q2, and DOJ Case Number 90-11-2-
20 0610. Payment shall be made in accordance with instructions provided by the Financial
21 Litigation Unit of the U.S. Attorney's Office for the Western District of Washington following
22 lodging of the Consent Decree. Settling Defendants shall call the U.S. Attorney's Office
23 at (206) 553-7970 and request said instructions. Any payments received by the
24 Department of Justice after 4 p.m. (Eastern Time) will be credited on the next business
25 day.

26 8. At the time of payment, each Settling Defendant shall send notice that such
27 payment has been made to:

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U.S. Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
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1 Chief, Environmental Enforcement Section
2 United States Department of Justice
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5 Lori L. Houck
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United States Environmental Protection Agency, Region 10
ORC-158, 1200 Sixth Avenue
Seattle, Washington 98101

8 Joseph Penwell
9 Finance Section
United States Environmental Protection Agency, Region 10
OMP-143
10 1200 Sixth Avenue
11 Seattle, Washington 98101

12 **VII. FAILURE TO MAKE PAYMENT**

13 9. If any Settling Defendant fails to make full payment of its Total Payment
14 Amount specified in Appendix B or C within the time required by Paragraph 5, Settling
15 Defendant shall pay Interest beginning on the effective date of this Consent Decree on the
16 unpaid balance, and shall pay stipulated penalties of \$1,000 per day for each day such
payment is late.

17 10. If any Settling Defendant fails to make full payment as required by Paragraph
18 5, the United States may, in addition to any other available remedies or sanctions, bring
19 an action against that Settling Defendant seeking injunctive relief to compel payment
20 and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for
21 failure to make timely payment. A Settling Defendant shall be deemed to have made full
22 payment once the payment it is required to make pursuant to this Consent Decree,
23 including any applicable stipulated penalties or interest pursuant to Paragraph 9 above,
24 has been received by the U.S. Attorney's Office at the address specified in Paragraph 7
of this Consent Decree.

1 **VIII. CERTIFICATION OF SETTLING DEFENDANT**

2 11. By signing this Consent Decree, each Settling Defendant certifies.
3 individually, that, to the best of its knowledge and belief, it has:

4 a. conducted a thorough, comprehensive, good faith search for
5 documents, and has fully and accurately disclosed to EPA and/or the Allocator, all
6 information currently in its possession, or in the possession of its officers, directors,
7 employees, contractors, or agents, which relates in any way to the ownership, operation,
8 or control of the Site, or to the ownership, possession, generation, treatment,
9 transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant
at or in connection with the Site;

10 b. no information that would suggest that its contributions of hazardous
11 substances, pollutants, or contaminants to one or both of the Hylebos Waterway Problem
12 Areas was greater or significantly different than determined in the Allocator Reports;

13 c. not altered, mutilated, discarded, destroyed, or otherwise disposed of
14 any records, documents, or other information relating to its potential liability regarding the
15 Site after notification of potential liability or the filing of a suit against it regarding the Site;
16 and

17 d. fully complied with any and all EPA requests for information regarding
18 the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and
19 9622(e).

20 **IX. ACCESS/INSTITUTIONAL CONTROLS**

21 12. If any portion of the Head or Mouth of the Hylebos Waterway Problem Areas,
22 or any property within the vicinity of the Hylebos Waterway where access and/or land or
23 water use restrictions are needed to implement response actions related to the Hylebos
24 Waterway Problem Areas, is owned or controlled by any of the Settling Defendants, such
Settling Defendants shall:

1 a. commencing on the date of lodging of this Consent Decree, provide
2 the United States and the State, and their representatives, including EPA and its
3 contractors, and any person and its representatives who is performing response
4 actions under an order or agreement with EPA, with access at all reasonable times
5 to the Problem Area, or property in the vicinity of the Hylebos Waterway, for the
6 purpose of conducting any activity related to the response action, including, but not
7 limited to, the following activities:

- 8 i. Monitoring the response action;
- 9 ii. Verifying any data or information submitted to the United
10 States;
- 11 iii. Conducting investigations relating to contamination at or near
12 the CB/NT Site or Problem Area;
- 13 iv. Obtaining samples;
- 14 v. Assessing the need for, planning, or implementing additional
15 response actions at or near the CB/NT Site or Problem Area;
- 16 vi. Implementing the response action;
- 17 vii. Determining whether the Problem Area, or other property is
18 being used in a manner that is restricted, or that may need to
19 be restricted by the final Remediation Plan for the Head and
20 Mouth of the Hylebos Waterway Problem Areas.

21 b. Commencing on the date of lodging of this Consent Decree, and
22 immediately upon receiving notice from EPA or its representative or any person performing
23 remedial action under an order or agreement with EPA, refrain from using the Problem
24 Area, or other property in any manner that may be interfering with pre-remedial design
25 activities, or may interfere with or adversely affect the integrity or protectiveness of the
26 remedial measures taken or to be taken related to the Hylebos Waterway Problem Areas.

1 c. EPA acknowledges that Settling Defendants' properties include
2 operating businesses. EPA acknowledges that the right of access should be exercised
3 at reasonable times and in a way which minimizes interference with the operation of those
4 businesses to the extent practicable. EPA, its representatives, or persons performing
5 response actions under an order or agreement with EPA shall make reasonable efforts to
6 provide five (5) working days' notice to the Settling Defendants, but the lack of such notice
7 shall not alter in any way Settling Defendants' obligation to provide access under this
8 Section.

9 **X. COVENANT NOT TO SUE BY UNITED STATES**

10 13. In consideration of the payments that will be made by Settling Defendants
11 under the terms of this Consent Decree, and except as specifically provided in Section XI
12 (Reservations of Rights by United States), the United States covenants not to sue or take
13 administrative action pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or
14 9607 relating to the Hylebos Waterway Problem Areas against any of the Settling
15 Defendants. This covenant not to sue shall take effect for each Settling Defendant upon
16 receipt of the payment as required by Section VI of this Consent Decree and upon
17 payment of any applicable stipulated penalties provided for in Paragraph 9 of this Consent
18 Decree. With respect to each Settling Defendant, individually, this covenant not to sue is
19 conditioned upon:

20 a. the satisfactory performance by Settling Defendant of all obligations
21 under this Consent Decree; and

22 b. the veracity of the information provided to EPA and/or the Allocator by
23 each Settling Defendant relating to that Settling Defendant's involvement with the Hylebos
24 Waterway Problem Areas.

25 This covenant not to sue extends only to each of the Settling Defendants.

1 **XI. RESERVATIONS OF RIGHTS BY UNITED STATES**

2 14. The covenant not to sue by the United States set forth in Paragraph 13 does
3 not pertain to any claims other than those expressly specified in Paragraph 13, including
4 but not limited to any civil or criminal claims under other statutes or under other Sections
5 of CERCLA. The United States also reserves, and this Consent Decree is without
6 prejudice to, all rights against Settling Defendants with respect to the following claims under
7 Section 106 or 107 of CERCLA::

8 a. liability for failure to meet a requirement of this Consent Decree,
9 including, but not limited to payment of stipulated penalties or Interest pursuant to Section
10 VI of this Decree or provision of access pursuant to Section IX of this Decree;

11 b. liability of the Settling Defendants listed in Appendix C for their
12 proportionate share of future Response Costs under the conditions and in accordance with
13 the terms specified in Section VI, 6.c.(ii) of this Decree and Appendix C to this Decree;

14 c. liability arising from the past, present, or future disposal, release, or
15 potential threat of a release of a hazardous substance, pollutant, or contaminant to areas
16 outside of the Hylebos Waterway Problem Areas, including releases to upland properties
17 adjacent to the Hylebos Waterway Problem Areas that have not migrated into the Hylebos
18 Waterway Problem Areas as of the date this Consent Decree is lodged with the Court;

19 d. criminal liability;

20 e. liability for damages for injury to, destruction of, or loss of natural
21 resources, and for the costs of any natural resource damage assessments within or outside
22 of the Hylebos Waterway Problem Areas; or

23 f. liability arising from the future release or potential threat of a release
24 of a hazardous substance, pollutant, or contaminant at or in the Hylebos Waterway
25 Problem Areas after the date of lodging of this Consent Decree.

26 15. Notwithstanding any other provision in this Consent Decree, the United
27 States reserves, and this Consent Decree is without prejudice to, the right to reopen or
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1 institute proceedings against any individual Settling Defendant in this action or in a new
2 action to reimburse the United States for Response Costs, and/or to issue an
3 administrative order to any individual Settling Defendant seeking to compel that Settling
4 Defendant to perform response actions relating to the Hylebos Waterway Problem Areas,
5 and/or to reimburse the United States for additional costs of response if:

6 a. The United States finds that the Certifications made in Section VIII of
7 this Decree are untrue or inaccurate in a material way; or

8 b. Information is discovered that indicates that such Settling Defendant
9 contributed hazardous substances to the Hylebos Waterway Problem Areas in such
10 greater amount or such greater toxic or other hazardous effects that such Settling
11 Defendant no longer qualifies as a minor contributor under the criteria established by the
12 Allocator's Reports.

13 16. Notwithstanding any other provision in this Consent Decree, the United
14 States reserves, and this Consent Decree is without prejudice to, the right to institute
15 proceedings against any individual Settling Defendant in this action or in a new action to
16 reimburse the United States for Response Costs, and/or to issue an administrative
17 order to any individual Settling Defendant seeking to compel that Settling Defendant to
18 perform response actions relating to any other Problem Area or portion of the CB/NT
19 Site.

20 **XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

21 17. Settling Defendants covenant not to sue and agree not to assert any claims
22 or causes of action against the United States or its contractors or employees with respect
23 to the remedial action at the Hylebos Waterway Problem Areas or this Consent Decree,
24 including, but not limited to:

25 a. any direct or indirect claim for reimbursement from the EPA Hazardous
26 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42
27 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

1 b. any claim against the United States arising out of response activities
2 at the Hylebos Waterway Problem Areas; and

3 c. any claim against the United States pursuant to Sections 107 and 113
4 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Hylebos Waterway Problem
5 Areas.

6 18. Nothing in this Consent Decree shall be deemed to constitute approval or
7 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
8 § 9611, or 40 C.F.R. Part 300.700(d).

9 19. Settling Defendants covenant not to sue and agree not to assert any claims
10 or causes of action against each other with regard to the matters addressed by this
11 Consent Decree pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and
12 9613.

13 **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

14 20. Nothing in this Consent Decree shall be construed to create any rights in, or
15 grant any cause of action to, any person not a Party to this Consent Decree. The United
16 States and Settling Defendants each reserve any and all rights (including, but not limited
17 to, any right to contribution), defenses, claims, demands, and causes of action which each
18 Party may have with respect to any matter, transaction, or occurrence relating in any way
19 to the Hylebos Waterway Problem Areas or the CB/NT Site against any person not a party
20 to this Consent Decree, except as provided below. If any Settling Defendant seeks to bring
21 a new action in connection with the Mouth or Head of the Hylebos Waterway, excepting
22 an action brought by a Settling Defendant against its insurance carrier, such Settling
23 Defendant agrees to notify the United States at least sixty (60) days prior to the
24 commencement of the action, and concurrently to provide to EPA all information in its
25 possession relating to the person's involvement at the Hylebos Waterway Problem Areas.

26 21. In any subsequent administrative or judicial proceeding initiated by the United
27 States for injunctive relief, recovery of Response Costs, or other relief relating to the
28

1 Hylebos Waterway Problem Areas, Settling Defendants shall not assert, and may not
2 maintain, any defense or claim based upon the principles of waiver, res judicata, collateral
3 estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention
4 that the claims raised in the subsequent proceeding were or should have been brought in
5 the instant action; provided, however, that nothing in this Paragraph affects the
6 enforceability of the covenant not to sue included in Paragraph 12.

7 22. The Parties agree, and by entering this Consent Decree this Court finds, that
8 each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to
9 protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA,
10 42 U.S.C. 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters
11 addressed" in this Consent Decree are all response actions taken and to be taken by the
12 United States or by any other entity, and all Response Costs incurred in connection with
13 the Hylebos Waterway Problem Areas, including all past and all future Response Costs
14 incurred and to be incurred by the United States, and all past and future Response Costs
15 incurred by any other entities in connection with the Hylebos Waterway Problem Areas.

16 **XIV. RETENTION OF JURISDICTION**

17 23. This Court shall retain jurisdiction over this matter for the purpose of
18 interpreting and enforcing the terms of this Consent Decree.

19 **XV. INTEGRATION/APPENDICES**

20 24. This Consent Decree and Appendices A, B, and C attached hereto constitute
21 the final, complete, and exclusive agreement and understanding among the Parties with
22 respect to the settlement embodied in this Consent Decree. The Parties acknowledge that
23 there are no representations, agreements, or understandings relating to the settlement
24 other than those expressly contained in this Consent Decree. "Appendix A" is the list of
25 Settling Defendants. "Appendices B and C" include the Total Payment Amount each
26 Settling Defendant is required to pay pursuant to this Consent Decree and designates
27 which premium amount (i.e., 100% or 50%) each Settling Defendant will pay. "Appendix
28

1 C" also includes the formulae for calculating the proportionate share of future Response
2 Costs that each Settling Defendant who pays a 50% premium may pay if the future
3 Response Costs exceed \$47,800,000.

4 **XVI. PUBLIC COMMENT**

5 25. This Consent Decree shall be lodged with the Court for a period of not less
6 than thirty (30) days for public notice and comment. The United States shall file with the
7 Court any written comments received and the United States' response thereto. The United
8 States reserves the right to withdraw or withhold its consent if comments regarding the
9 Consent Decree disclose facts or considerations that indicate that this Consent Decree is
10 inappropriate, improper, or inadequate. Settling Defendants consent to entry of this
11 Consent Decree without further notice, and the United States reserves the right to oppose
12 an attempt by any person to intervene in this civil action.

12 **XVII. EFFECTIVE DATE**

13 26. The effective date of this Consent Decree shall be the date of entry by this
14 Court, following public comment pursuant to Paragraph 25.

15 **XVIII. SIGNATORIES/SERVICE**

16 27. Each undersigned representative of a Settling Defendant to this Consent
17 Decree and the Assistant Attorney General for the Environment and Natural Resources
18 Division of the United States Department of Justice, or her delegatee, certifies that he or
19 she is fully authorized to enter into the terms and conditions of this Consent Decree and
20 to execute and bind legally such party to this document.

21 28. Each Settling Defendant hereby agrees not to oppose entry of this Consent
22 Decree by this Court or to challenge any provision of this Consent Decree, unless the
23 United States has notified Settling Defendants in writing that it no longer supports entry of
24 the Consent Decree.

25 29. Each Settling Defendant shall identify, on the attached signature page, the
26 name and address of an agent who is authorized to accept service of process by mail on

1 behalf of that Party with respect to all matters arising under or relating to this Consent
2 Decree. Settling Defendants hereby agree to accept service including, but not limited to,
3 service of a summons, in that manner and to waive the formal service requirements set
4 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this
5 Court.

6 SO ORDERED THIS _____ DAY OF _____, 19____.

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9 _____
10 United States District Judge
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1
2 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
3 United States v. Bay Chemical, et al., C.A. No. _____, relating to the Hylebos
4 Waterway Problem Areas, within the Commencement Bay Nearshore/Tideflats Superfund
Site in the City of Tacoma, Pierce County, Washington:

5 FOR THE UNITED STATES OF AMERICA

6
7
8 Date: _____

9
10 LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

11
12
13 Date: _____

14 ELIZABETH LOEB
Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
17 (202) 616-8916

18
19
20 United States Attorney for the
Western District of Washington

21
22 Assistant United States Attorney
United States Courthouse


23
24
25
26 Consent Decree -

27 U.S. Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
28 Washington, D.C. 20044

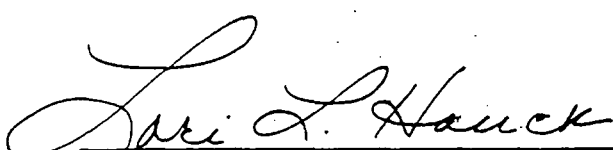
1
2 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
3 States v. Bay Chemical, et al., C.A. No. _____ relating to the Hylebos Waterway
4 Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the
City of Tacoma, Pierce County, Washington:

5 FOR THE UNITED STATES OF AMERICA
6 (CONTINUED)

7 Date: 7-27-99

8 
9 CHUCK CLARKE
10 Regional Administrator, Region 10
11 U.S. Environmental Protection Agency
12 1200 Sixth Avenue
13 Seattle, Washington 98101

14 Date: 7/26/97

15 
16 LORI L. HOUCK
17 Assistant Regional Counsel
18 U.S. Environmental Protection
19 Agency
20 1200 Sixth Avenue
21 Seattle, Washington 98101

22
23
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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

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3 United States v. Bay Chemical, et al., C.A. No. _____, relating to the Hylebos
4 Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund
5 Site in the City of Tacoma, Pierce County, Washington:

6 FOR BAY CHEMICAL COMPANY, INC.

7 Date: Aug 11 1999

8 
9 Richard J. Camp
10 President
11 Bay Zinc Company, Inc. (successor to
12 Bay Chemical Company, Inc.)
13 P.O. Box 167
14 Moxee City, WA 98936

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16
17 Keith E. Moxon
18 Buck & Gordon
19 1011 Western Avenue, Suite 902
20 Seattle, WA 98104
21 (206) 382-9540
22
23
24
25

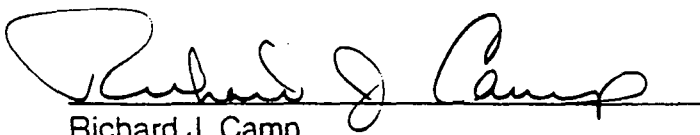
26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station

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3 United States v. Bay Chemical Company et.al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tidelands
5 Superfund Site in the City of Tacoma, Pierce County, Washington:

6
7 FOR THE BAY ZINC COMPANY, INC.

8 Date: Aug 11, 1999



9 Richard J. Camp
10 President
11 Bay Zinc Company, Inc.
12 P.O. Box 167
13 Moxee City, WA 98936

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Keith E. Moxon
16 Buck & Gordon
17 1011 Western Avenue, Suite 902
18 Seattle, WA 98104
19 (206) 382-9540

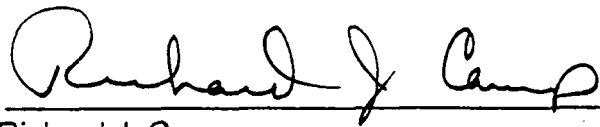
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28 Environmental & Natural Resources Division
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4 States v. Bay Chemical Company, et. al., C.A. No. _____, relating to the
5 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats
6 Superfund Site in the City of Tacoma, Pierce County, Washington..

7 FOR THE BAY SMELTING COMPANY

8
9 Date: August 11 1999



Richard J. Camp
President
Bay Zinc Company, Inc. (successor to Bay
Smelting Company)
P.O. Box 167
Moxee City, WA 98936

10
11
12
13
14
15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16
17 Keith E. Moxon
18 Buck & Gordon
19 1011 Western Avenue, Suite 902
20 Seattle, WA 98104
21 (206) 382-9540
22
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26 Consent Decree -

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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to
4 the Hylebos Waterway Problem Areas within the Commencement Bay
5 Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR RICHARD J. CAMP, SR.

7
8 Date: 7/30/99

Kathryn M. Swinehart

Kathryn M. Swinehart (wife of and successor to
community property interests of Richard J.
Camp, Sr., deceased)

11
12
13 Agent Authorized to Accept Service on Behlf of Above-Signed Party:

14
15 Keith E. Moxon
16 Buck & Gordon
17 1011 Western Avenue, Suite 902
18 Seattle, WA 98104
19 (204) 382-9540
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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to
4 the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington..

5
6 FOR KATHRYN . SWINEHART

7
8 Date: 7/30/99

Kathryn M. Swinehart

Kathryn M. Swinehart (co-owner of property
owned jointly with Richard J. Camp, Sr.)

9
10
11
12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Keith E. Moxon
14 Buck & Gordon
15 1011 Western Avenue, Suite 902
16 Seattle, WA 98104
17 (206) 382-9540
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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tidelands
5 Superfund site in the City of Tacoma, Pierce County, Washington..

6 FOR BARBARA W. ALLEN

7
8 Date: July 18-1999

Barbara W. Allen
Barbara W. Allen
5114 Harbor View Drive NE
Tacoma, WA 98422

10
11
12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

13 Glenn M. Byrd
14 President
15 Byrd Real Estate Services, Inc.
16 1220 South 356th Street, Suite C-5
17 Federal Way, WA 98003
18 (253) 661-1760
19
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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
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4 Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR CENEX AG, INC.

7
8 Date: 7/20/99



9 Chris Kabella
10 Vice President
11 Cenex/Harvest States
12 P.O. Box 64089
13 St. Paul, MN 55164-0089

14 Agent Authorized to Accept Service on Behalf of Above-signed Party:

15 Chris Kabella
16 Cenex/Harvest States
17 P.O. Box 64089
18 St. Paul, MN 55164-0089

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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
5 Superfund site in the City of Tacoma, Pierce County, Washington.

6 FOR LONE STAR NORTHWEST, INC.

7
8 Date: July 19, 1999

Shawn C. Lilley

9 Shawn C. Lilley
10 General Counsel
11 4636 E. Marginal Way S.
12 Suite B-140
13 Seattle, WA 98134

14 Agent Authorized to Accept Service on Behalf of Above-signed Party:

15 William H. Chapman
16 Attorney
17 Preston Gates & Ellis
18 5400 Columbia Center
19 701 Fifth Avenue
20 Seattle, WA 98104-7078
21 (206) 623-7580

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26 Consent Decree -

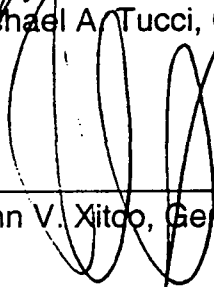
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3 United States v. Bay Chemical Company, et. al., C.A. No. _____, relating to
4 the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
5 Tideflats Superfund site in the City of Tacoma, Pierce County, Washington.

6 FOR MINTERCREEK DEVELOPMENT

7
8 Date: July 15, 1999

9 
Michael A. Tucci, General Partner

10
11 
12 John V. Xitco, General Partner

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14
15 Christopher M. Huss
16 Attorney at Law
17 4224 Waller Road
18 Tacoma, WA 98443-1623
19 (253) 922-6676

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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating
4 to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
5 Tideflats Superfund site in the City of Tacoma, Pierce County, Washington.

6
7 FOR NORDLUND BOAT COMPANY, INC.

8
9 Date: 7/15/99

Paul M. Nordlund

Paul Nordlund
President
1626 Marine View Drive
Tacoma, WA 98422

10
11
12
13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Gregory A. Jacoby
15 Attorney
16 McGavick Graves, P.S.
17 1102 Broadway, Suite 500
18 Tacoma, WA 98402
19 (253) 627-1181
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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
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4 the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
5 Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR NORDLUND PROPERTIES COMPANY, INC.

7
8
9 Date: 7/15/99 Paul H. Nordlund
10 Paul Nordlund
11 President
12 1626 Marine View Drive
13 Tacoma, WA 98422

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Gregory A. Jacoby
16 Attorney
17 McGavick Graves, P.S.
18 1102 Broadway, Suite 500
19 Tacoma, WA 98402
20 (253) 627-1181


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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR NORMAN NORDLUND

7
8 Date: 7-15-99



9 Phyllis Nordlund (co-owner of property owned
10 jointly with Norman Nordlund)
11 1626 Marine View Drive
12 Tacoma, WA 98422

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Gregory A. Jacoby
15 Attorney
16 McGavick Graves, P.S.
17 1102 Broadway, Suite 500
18 Tacoma, WA 98402
19 (253) 627-1181
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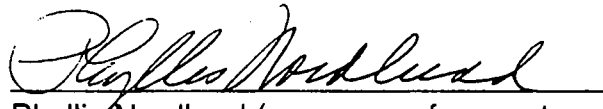
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5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR PHYLLIS NORDLUND

7
8 Date: 7-15-99



9 Phyllis Nordlund (co-owner of property
10 owned jointly with Norman Nordlund)
11 1626 Marine View Drive
12 Tacoma, WA 98422

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Gregory A. Jacoby
15 Attorney
16 McGavick Graves, P.S.
17 1102 Broadway, Suite 500
18 Tacoma, WA 98402
19 (253) 627-1181


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26 Consent Decree -

27 U.S. Department of Justice
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Washington, D.C. 20044

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4 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
5 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
6 Superfund Site in the City of Tacoma, Pierce County, Washington.

7
8
9 FOR RYDER TRUCK RENTAL, INC.

10 Date: August 12, 1999


Diana H. Hull
Assistant Coeneral Counsel
3600 NW 82nd Avenue
Miami, FL 33166

11
12
13
14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Diana H. Hull
16 Assistant Coeneral Counsel
17 3600 NW 82nd Avenue
18 Miami, FL 33166
19 (305) 500-3588
20
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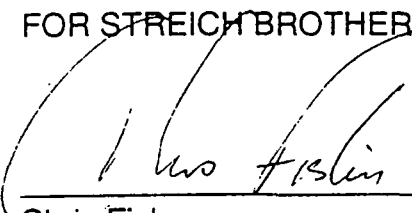
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28 Environmental & Natural Resources Division
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P.O. Box 7611
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Washington, D.C. 20044

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4 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
5 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
6 Superfund Site in the City of Tacoma, Pierce County, Washington.

7 FOR STREICH BROTHERS, INC.

8 Date: 7-26-99

9 
Chris Fisher

10 1660 Marine View Drive
11 Tacoma, WA 98422

12
13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14
15 John Spencer
16 Attorney
17 5308 12th Street East
18 Tacoma, WA 98424
19 (253) 922-8724
20
21
22
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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

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2 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tidelands
5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR VANCE LIFT TRUCK SERVICES, INC.

7 Date: 7-15-99

Henry Brist Pres VLTs

8 Henry Brist
9 President
10 6934 Canyon Road
11 Ellensburg, WA 98926

12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Gregory A. Jacoby
14 Attorney
15 McGavick Graves, P.S.
16 1102 Broadway, Suite 500
17 Tacoma, WA 98402
18 (253) 627-1181

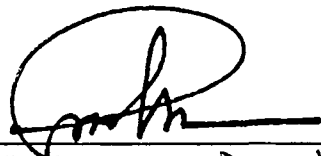
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3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6 FOR OLSON & CURRAN BARNACLE STOPPING; SEAGULL PROOFING,
7 SALT WATER FREE, VERTICAL DRY DOCK CO., LTD.; dba OLE &
8 CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S BOATHOUSES;
9 DON OLSON & ARNOLD OLSON dba BIG "O" CO., DON OLSON;
10 ARNOLD & PETER CURRAN dba WEST-WATERWAY ASSOCIATES.

11 Date: 7/28/99

12 
13 ~~Kim Mickelson~~ Donald S. Olson
14 ~~Vice~~ President
15 4224 Marine View Drive
16 Tacoma, WA 98422

17 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

18 Steven Branom
19 Attorney at Law
20 1601 5th Avenue, Suite 2200
21 Seattle, WA 98101-1625
22 (206) 624-2200

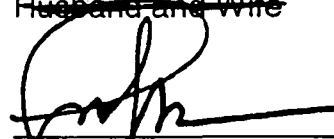
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4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tidelands
Superfund Site in the City of Tacoma, Pierce County, Washington.

5 FOR DONALD S. AND BARBARA L. OLSON,
6 ~~Husband and Wife~~

7 Date: 7/28/99


8 Donald S. Olson

9
10
11 Date: 7/25/99


12 Barbara L. Olson

13
14
15 Agent Authorized to Accept Service on Behalf of the Above-Signed Party:

16 Steve Branom
17 Attorney at Law
18 1601 5th Avenue, Suite 2200
19 Seattle, WA 98101-1625
20 (206) 624-2200

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2 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
Superfund Site in the City of Tacoma, Pierce County, Washington.

5 FOR CHARLES P. AND PATRICIA CURRAN,
6 Husband and Wife.

7
8
9 Date: 7-31-99

Charles P. Curran
Charles P. Curran

10
11
12 Date: 7-31-99

Patricia Curran
Patricia Curran

13
14
15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16
17 Steve Branom
18 Attorney at Law
19 1601 5th Avenue, Suite 2200
20 Seattle, WA 98101-1625
21 (206) 624-2200
22
23
24
25

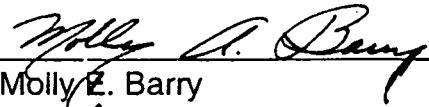
26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1
2 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
Superfund Site in the City of Tacoma, Pierce County, Washington.

5 FOR MOLLY E. BARRY, Individually

6
7 Date: 8/2/99


8 Molly E. Barry
9 A.

10
11
12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Steve Branom
14 Attorney at Law
15 1601 5th Avenue, Suite 2200
16 Seattle, WA 98101-1625
17 (206) 624-2200
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26 Consent Decree -

27 U.S. Department of Justice
28 Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1
2 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
3 United States v. Bay Chemical Company, et al., C.A. No. _____, relating to the
4 Hylebos Waterway Problem Areas within Commencement Bay Nearshore Tideflats
5 Superfund Site in the City of Tacoma, Pierce County, Washington.

6
7 FOR KAY E. OLSON, Individually

8 Date: 8-5-99

9 
Kay E. Olson

10
11
12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Steve Branom
14 Attorney at Law
15 1601 5th Avenue, Suite 2200
16 Seattle, WA 98101-1625
17 (206) 624-2200
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26 Consent Decree -

27 U.S. Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
28 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

**Appendix A to the consent decree in
United States v. Bay Chemical, et al.**

Civ. No. _____

List of Settling Defendants

Bay Chemical Co.
Bay Smelting Co.
Bay Zinc Company, Inc.
Richard J. Camp, Sr.

Barbara Allen

Cenex Agriculture, Inc.

Lone Star Northwest, Inc.

Nordlund Boat Co., Inc.
Nordlund Properties, Inc.
Norman and Phyllis Nordlund

Ryder Truck Rental, Inc.

Vance Lift Truck Service, Inc.

Mintercreek Development Co.

Streich Brothers, Inc.

Olson 7 Curran Barnacle Stopping; Seagull Proofing, Salt Water Free, Vertical Dry Dock Co., Ltd; dba Ole & Charlie's High & Dry Co. and Ole & Dick's Boathouses; Don Olson & Arnold Olson dba Big "O" Co., Don Olson; Arnold & Peter Curran dba West-Waterway Associates - (hereinafter referred to Ole & Charlie's High & Dry Co.)
Donald S. and Barbara L. Olson
Charles P. and Patricia Curran
Molly E. Barry
Kay E. Olson

Appendix B to the Consent Decree in United States vs. Bay Chemical et al., Civ. No. _____

Settling Defendant	Past Cost Payment	Future RD/RA Cost Payment	100% Premium	Total Future Cost Payment	Total Payment Amount
Cenex Agriculture, Inc.	\$44,275	\$4,780	\$49,055	\$53,835	\$98,110
Nordlund Boat Co, Inc.	\$25,300	\$2,390	\$27,690	\$30,080	\$55,380
Nordlund Properties, Inc. Norman and Phyllis Nordlund					
Ryder Truck Rental, Inc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Vance Lift Truck Services, Inc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Barbara Allen	\$18,975	\$6,394	\$25,369	\$31,763	\$50,738
Ole and Charlie's High and Dry Co. Donald and Barbara Olson Charles and Patricia Curran Molly E. Barry Kay E. Olson.	\$56,925	\$16,220	\$73,145	\$89,365	\$146,290
Streich Brothers, Inc,	\$50,600	\$4,780	\$55,380	\$60,160	\$110,760
Total	\$234,025			\$312,713	\$546,738

Appendix C to the Consent Decree in United States vs. Bay Chemical et al., Civ. No. _____

Settling Defendant	Past Cost Payment	Future RD/RA Cost Payment	50% Premium	Total Future Cost Payment	Total Payment Amount
Bay Chemical Co. Bay Smelting Co. Bay Zinc Company, Inc. Richard Camp, Sr.	\$50,600	\$16,220	\$33,410	\$49,630	\$100,230
Lone Star Northwest, Inc.	\$44,275	\$4,780	\$24,528	\$29,308	\$73,583
Mintercreek Development Co.	\$25,300	\$2,390	\$13,845	\$16,235	\$41,535
Total	\$120,175			\$95,173	\$215,348

If actual future total response costs exceed the cost estimate for future response cost of \$47,800,000 used in the allocation process, then the parties listed above shall contribute proportionally to the cost exceedence in the amount to be determined according to the following formulas:

For the Bay Chemical parties, the formula shall be $(\text{Actual Future Total Response Cost minus } \$47,800,000) \times .03\% = \text{additional contribution}$.

For Lone Star Northwest, Inc., the formula shall be $(\text{Actual Future Total Response Cost minus } \$47,800,000) \times .01\% = \text{additional contribution}$.

For Mintercreek Development Co, the formula shall be $(\text{Actual Future Total Response Cost minus } \$47,800,000) \times .005\% = \text{additional contribution}$.